Audit of Forest Planning and Practices On Nisga'a Lands

FPB/ARC/69

February 2005

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Forest Practices Board Commentary

In 2004, as required by chapter 5, section 55 of the *Nisga'a Final Agreement* (the Agreement), the Forest Practices Board carried out the fourth of five annual audits of compliance with provincial forest practices legislation and the forestry-related requirements of the Agreement.

The Agreement requires the Board to perform compliance audits of activities and obligations under Crown licences on Nisga'a lands in each year of a defined five-year transition period that ends on May 10, 2005. During this period, annual compliance audits must assess:

- Compliance with the *Forest Practices Code of British Columbia Act* and related regulations (the Code). As per the Agreement and section 216 of the *Forest and Range Practices Act* (FRPA), the Code continues to apply on Nisga'a lands and has not been replaced by FRPA.
- Compliance with the forestry-related provisions of the Agreement. These provisions include forest cover constraints (e.g., a minimum age of 120 years must be maintained for at least 80 percent of the pine mushroom polygon); visual objectives for specific sites; requirements for local approval of harvesting in specific locations (e.g., harvesting within one kilometre of Gingietl Creek Ecological Reserve requires the agreement of the Gitwinksihlkw Village Government); and specific no harvest zones (e.g., 100 metres on either side of the centre line of the Grease Trail).

The Board notes that the timber harvesting, silviculture and road maintenance activities carried out on Nisga'a lands by New Skeena Forest Products Inc., West Fraser Mills Ltd., Sim Gan Forest Corporation, and BC Timber Sales, Skeena Business Area complied in all significant respects with the requirements of the Code and the Agreement as of July 2004.

Additionally, road maintenance and forest health obligations on Nisga'a lands that are the responsibility of the Ministry of Forests, Kalum Forest District complied in all significant respects with the requirements of the Code as of July 2004.

However, it should be noted that the bankruptcy of New Skeena Forest Products Inc. (NSFP) raises a number of concerns with respect to the timely fulfillment of NSFP's existing obligations on Nisga'a lands. Specific concerns raised by the audit were:

- the timely completion of yarding and hauling activities on incomplete cutblocks;
- the timely fulfillment of silvicultural obligations; and
- the fulfilment of road maintenance obligations.

Recommendations

As provided by section 131 ofFRPA, the Board makes the following recommendations:

1. The Board recommends that the provincial government ensure that logging activities be completed on Blocks 250041 and 233331 to provide for the timely regeneration of the stand. These activities should be completed by August 31, 2005.
2. The Board recommends that, where required, the provincial government ensure that planting activities on harvested cutblocks be completed as soon as possible to provide for the timely regeneration of the stands and that plantation maintenance activities be resumed to ensure that existing plantations meet free-growing obligations within the required timeframes. These activities should be completed by August 31, 2005.
3. The Board recommends that prior to May 10, 2005, a review of outstanding road and bridge maintenance obligations be conducted and an action plan be implemented to upgrade, decommission or remove access to any structures currently not meeting the requirements of the *Forest Road Regulation*. This action plan must be agreeable to the Nisga'a government.

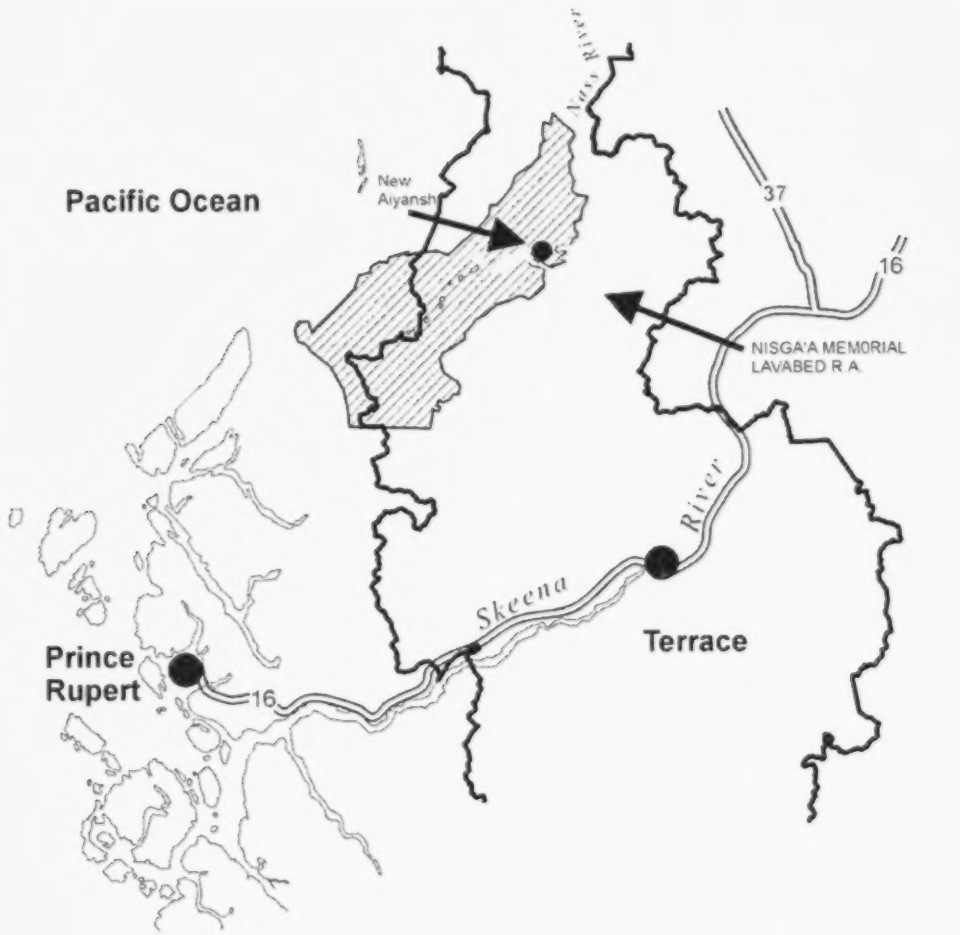
In accordance with section 186 of the Act, the Board requests that the provincial government advise the Board by August 31, 2005, of the actions taken to address these recommendations.

The Board intends to conduct it's final audit of forest planning and practices and Forest Practices Code enforcement on Nisga'a lands in September, 2005. This audit will assess all activities, planning and obligations subject to the Code for the period July 10, 2004, until May 10, 2005, as well as the appropriateness of government's enforcement for the period July 19, 2003, until May 10, 2005. During the course of this audit, the Board will also assess the actions taken by the provincial government to address the above recommendations.

Bruce Fraser, PhD
Chair, Forest Practices Board

January 27, 2005

Audit of Nisga'a Lands



Detailed Findings

Background

Description of the Nisga'a Lands

The Nisga'a lands are located in and around the Nass Valley, which is approximately 100 kilometres northwest of the city of Terrace.

Overview of Nisga'a lands

The lands encompass approximately 199,000 hectares. The existing Crown licences have an allowable annual cut varying between 125,000 cubic metres and 155,000 cubic metres during the transition period. The actual annual amount cut has varied between 97,600 cubic metres for the year ending May 10, 2001 and approximately 23,000 cubic metres for the year ending May 10, 2004.

Operations on Nisga'a Lands

Four operators currently have activities or obligations under Crown licences on Nisga'a Lands and were subject to audit:

- New Skeena Forest Products Inc. (NSFP), formerly known as Skeena Cellulose Inc.
- Sim Gan Forest Corporation (Sim Gan)
- West Fraser Mills Ltd. (West Fraser)
- BC Timber Sales, Skeena Business Area (BCTS Skeena).

The district manager of the Kalum Forest District also has obligations on Nisga'a lands. NSFP was the only company logging under Crown licences on Nisga'a lands at the time of the audit. NSFP's allowable annual cut (AAC) ranges between 125,000 cubic metres and 155,000 cubic metres for each year of the five-year transition period.

In addition, forestry activities were also carried out by the Nisga'a Nation on Nisga'a lands. However, these activities are subject to the *Nisga'a Forest Act* rather than the Code and were outside the scope of this audit.

Audit Approach and Scope

All forestry activities, planning and obligations subject to the Code for the period July 19, 2003, to July 9, 2004, were included in the scope of the audit, except fire protection. These included ongoing forest practices as well as continuing reforestation and road maintenance obligations. Fire protection was not audited as there were no active operations during the field audit and no 2004 operations required a fire preparedness plan.

The activities and obligations that occurred during the audit period and that were subject to audit are described in Table 1. The audit work on selected roads and cutblocks included ground-based procedures and assessments from the air using a helicopter.

Table 1: Audit sample and population for activities and obligations during the audit period.

Activity/ Obligation	NSFP	Sim Gan	West Fraser	BCTS Skeena
Operational Planning	No new plans.	No new plans.	No new plans.	No new plans.
Harvesting[1]	4 of 5 cutblocks	None	None	None
Road Construction	None	None	None	None
Road Maintenance	57 of 294 kilometres	33 of 39 kilometres	12 of 17 kilometres	None
Permanent Road Deactivation	None	None	None	None
Bridge Construction	None	None	None	None
Bridge Maintenance	5 of 44 bridges	4 of 9 bridges	None	None
Silviculture Activities	0 cutblocks	0 cutblocks	2 of 6 cutblocks	0 of 4 cutblocks
Silviculture Obligations[2]	5 of 10 cutblocks	2 of 3 cutblocks	6 of 13 cutblocks	3 of 9 cutblocks

[1] Of the 5 cutblocks with harvesting activity, only 3 blocks had any felling or yarding. The activities on the remainder of the blocks were limited to loading and piling.

[2] In addition to existing silviculture obligations (regeneration delay and free growing), there is a general requirement to maintain stands that have met regeneration delay but are not yet free growing (section 70 4(d) of the Code). This requirement expires once the stands are free growing. Currently, approximately 150 cutblocks fall into this population. Audit overview flights and field examination of 33 cutblocks between 2001-2004 did not identify any potentially significant issues with this population, except for the forest health issues noted in the Findings section below.

The district manager of the Kalum Forest District also has obligations for forest management on Nisga'a lands. Specific obligations, which were subject to audit, are:

- maintenance of forest service roads (FSRs) not maintained by other parties under road use agreements. The audit assessed 12.2 of the 34 kilometres of forest service road that are the District Manager's responsibility, including maintenance of 5 bridges.
- actions to address forest health issues.

Findings

The Agreement provides for allowable annual cuts between 125,000 cubic metres and 155,000 cubic metres for licencee operations during the transition period. The total cut in the first 4 years of the transition period was 266,700 cubic metres. Of this 266,700 cubic metres, only 22,800 cubic metres (8.5 percent) have been logged since May 10, 2003. The low level of activity has both economic and environmental implications, notably:

- a reduction in the transfer payments from the Provincial government to the Nisga'a Nation that were established under the Agreement and are paid for each cubic metre of wood harvested; and
- a general deterioration of the road network due to the lower level of maintenance activities on inactive roads.

NSFP holds the majority of the allowable annual cut, with a cut that ranges between 113,000 and 140,000 cubic metres for each year of the five-year transition period. NSFP was in bankruptcy protection during the audit period and therefore did not carry out industrial development or activities related to its silvicultural or road obligations during the audit period. The only harvest blocks active during 2003 were those where the logging rights had been sold by NSFP. While two of the blocks remain partially felled and yarded, they have not been active during 2004.

As a result of the low levels of activity, much of the field audit work was directed toward the assessment of silvicultural obligations and road maintenance and deactivation obligations.

The audit identified the following areas of concern:

- Road and bridge maintenance obligations – The audit identified a general deterioration in the state of the road network on Nisga'a lands. To a large extent, this is to be expected in the absence of significant industrial activity. Much of the road traffic on main routes is either sporadic or non-industrial traffic and does not contribute to road maintenance funding. The most common problems included brush encroachment and potholing of roads. Additionally, a number of road and bridge washouts have occurred, reducing the overall level of access. The potential for environmental impacts associated with road failures is considered to have increased as a result of the low levels of road maintenance. However, at the current time, no individually significant impacts have been identified by the audit.

- NSFP silviculture program – of the approximately 720 hectares logged since the commencement of the transition period, only 106 hectares have been planted to date. No planting has occurred since spring 2002. Over 200 hectares have remained unplanted for 3 or more years since logging commenced. Plantation establishment (regeneration delay) obligations for the blocks harvested during the transition period are due between 2006 and 2009. The lack of timely planting leads to increased brush competition, a higher risk of failure to meet silvicultural obligations in a timely manner, and increased cost to establish a free-growing stand. However, this concern is not currently a compliance issue as the obligations are not yet legally due and can potentially still be met.
- Harvest activities – Areas of felled timber remain unyarded and additional amounts of piled timber have been left on currently inactive blocks for which the harvest rights were sold by NSFP. Lack of timely completion of logging activities elevates the fire risk, reduces the value of the timber and leads to delayed payment of stumpage to the Crown and transfer payments to the Nisga'a Nation. No significant environmental impacts were noted as a result of the lack of activity.
- Forest health – Dothistroma needle blight (Mycosphaerella pini) is a potentially devastating disease that was noted as causing damage to regenerating lodgepole pine stands in both the 2002 and 2003 audits. This was particularly notable in stands within the regulatory window for assessment of free-growing status and some concern was expressed in previous audits that a number of these stands might revert to non free-growing status after transfer to the Nisga'a Nation. This audit noted that the free-growing standards in blight affected stands have recently become significantly more stringent. As a result, the risk of future stands being declared free growing then subsequently reverting to a non free-growing status is now considered to be low. However, some risk remains in relation to those stands declared free growing earlier in the transition period using less stringent free-growing standards for blight-affected trees.

Audit Opinion

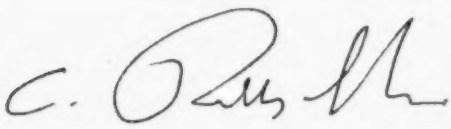
In our opinion, the timber harvesting, silviculture and road maintenance activities of New Skeena Forest Products Inc., West Fraser Mills Ltd., Sim Gan Forest Corporation, and BC Timber Sales, Skeena Business Area complied in all significant respects with the requirements of the Code and the Agreement as of July 2004.

Additionally, road maintenance and forest health obligations on Nisga'a lands that are the responsibility of the Ministry of Forests, Kalum Forest District complied in all significant respects with the requirements of the Code as of July 2004.

In reference to compliance, the term "in all significant respects" recognizes that there may be minor instances of non-compliance that either may not be detected by the audit, or that are detected but not considered worthy of inclusion in the audit report.
The Audit Approach section of this report describes the basis of the audit work performed in reaching the above conclusion. The audit was conducted in accordance with the auditing

standards of the Forest Practices Board. Such an audit includes examining sufficient forest planning and practices to support an overall evaluation of compliance with the Code and the Agreement.

Without qualifying the above opinion, attention should be drawn to the potential for future environmental impacts in the absence of the timely fulfillment of the outstanding harvest, road maintenance and silviculture obligations of New Skeena Forest Products Inc.



Chris Ridley-Thomas, RPBio
Auditor of Record,
Vancouver, British Columbia
January 18, 2005

Appendix A: Forest Practices Board Compliance Audit Process for Nisga'a Lands

Background

The Forest Practices Board conducts audits of government and agreement-holders for compliance with FRPA. The Board has the authority to conduct these periodic independent audits under section 122(1) of FRPA. Compliance audits examine forest planning and practices to determine whether or not they meet FRPA requirements.

The Forest Practices Board is also required by chapter 5, section 55 of the Nisga'a Final Agreement (the Agreement) to perform compliance audits of forest agreements and licences on Nisga'a lands in each year of a defined five-year transition period ending on May 10, 2005. During this period, annual audits must assess compliance with provincial forest practices legislation and the forestry-related requirements of the Agreement.

Most of the the Code was repealed on January 31, 2004 and replaced with the FRPA. However, as per the Agreement and section 216 of FRPA, the Code continues to apply on Nisga'a lands and has not been replaced by FRPA Audit Standards.

Audits by the Forest Practices Board are conducted in accordance with the auditing standards developed by the Board. These standards are consistent with generally accepted auditing standards.

Audits on Nisga'a lands determine compliance with the Code based on criteria derived from the Code and its related regulations as well as the forestry-related requirements of the Agreement. Audit criteria are established for the evaluation or measurement of each practice required by the Code or Agreement. The criteria reflect judgments about the level of performance that constitutes compliance with each requirement.

The standards and procedures for compliance audits are described in the Board's *Compliance Audit Reference Manual*. In addition, specific additional tests were required to audit the requirements of the Agreement (chapter 5 and appendix H).

Audit Process

Conducting the Audit

The Board determines the staff and resources required to conduct the audit and the period covered by the audit. Board staff also meet with the party being audited to discuss the logistics of the audit before commencing the work.

Aside from notifying those licensees that operate on Nisga'a lands about the audit, the Board also notifies the Forestry Transition Committee. The Forestry Transition Committee and the Ministry of Forests, Kalum Forest District, which is part of the Prince Rupert Forest Region, jointly administer forestry activities on Nisga'a lands. The Forestry Transition Committee consists of the Kalum forest district manager and one person authorized by the Nisga'a Nation.

All the activities carried out during the period subject to audit are identified; for example, harvesting or replanting sites and building or deactivating road sections. The items that make up each forest activity are referred to as a "population." For example, all sites harvested form the "timber harvesting population." All road sections constructed form the "road construction population." The populations are then sub-divided based on factors such as characteristics of the sites and potential severity of the consequences of non-compliance on the sites.

For each population, the auditors choose the most efficient means of obtaining information to conclude whether there is compliance with the Code. Because of limited resources, auditors usually rely upon sampling to obtain audit evidence, rather than inspecting all activities. Individual sites and forest practices within each population have different characteristics, such as the type of terrain or type of yarding. Each population is divided into distinct sub-populations on the basis of common characteristics (e.g., steep ground vs. flat ground). A separate sample is selected for each population (e.g., the cutblocks selected for auditing timber harvesting). Within each population, more audit effort (i.e., more audit sampling) is allocated to the sub-population where the risk of non-compliance is greater.

Audit work in the field includes assessments from the air using helicopters and intensive ground procedures, such as measuring specific features like road or riparian reserve zone width. The audit teams generally spend one to two weeks in the field.

Evaluating the Results

The Board recognizes that compliance with the many requirements of the Code or the Agreement is more a matter of degree than absolute adherence. Determining compliance, and assessing the significance of non-compliance, requires the exercise of professional judgment within the direction provided by the Board.

Auditors collect, analyze, interpret and document information to determine the audit results. The audit team, composed of professionals and technical experts, first determines whether forest practices are in compliance with Code or Agreement requirements. For those practices considered to not be in compliance, the audit team then evaluates the degree to which the practices are judged not in compliance. The significance of the non-compliance is determined based on a number of criteria, including the magnitude of the event, the frequency of its occurrence, and the severity of the consequences.

As part of the assessment process, auditors categorize their findings into the following levels of compliance:

Compliance – where the auditor finds that practices meet Code or Agreement requirements.

Not significant non-compliance – where the auditor, upon reaching a non-compliance conclusion, determines that a non-compliance event, or the accumulation and consequences of a number of non-compliance events, is not significant and is not considered worthy of reporting.

Significant non-compliance – where the auditor determines that the event or condition, or the accumulation and consequences of a number of non-compliance events or conditions is, or has the potential to be, significant and considered worthy of reporting.

Significant breach – where the auditor finds that significant harm has occurred, or is beginning to occur, to persons or the environment as a result of the non-compliance. A significant breach can also result from the cumulative effect of a number of non-compliance events or conditions. Identification of a possible significant breach requires the auditor to conduct tests to confirm whether or not there has been a breach. If it is determined that a significant breach has occurred, the auditor is required by the Forest Practices Board Regulation to immediately advise the Board, the party being audited, and the Ministers of Forests, Energy and Mines, and Water, Land and Air Protection.

Reporting

Based on the above evaluation, the auditor then prepares the audit report for submission to the Board. The auditee is given a draft of the report before it is submitted to the Board so that the party is fully aware of the findings. The auditee is also kept fully informed of the audit findings throughout the process, and is given opportunities to provide additional relevant information and to ensure the auditor has complete and correct information.

Once the auditor submits the report, the Board reviews it and determines if the audit findings may adversely affect any party or person. If so, the party or person must be given an opportunity to make representations before the Board decides the matter and issues a final report to the public and government. The representations allow parties that may potentially be adversely affected to present their views to the Board.

At the discretion of the Board, representations may be written or oral. The Board will generally decide on written representations, unless the circumstances strongly support the need for an oral hearing.

The Board then reviews the report from the auditor and the representations from parties that may potentially be adversely affected before preparing its final commentary, which includes the Board's conclusions and, if appropriate, recommendations.

If the Board's conclusions or recommendations result in newly adversely affected parties or persons, additional offers of representations would be required.

Once the representations have been completed, the report is finalized and released: first to the auditees and then to the Nisga'a, Federal and Provincial governments, and then to the public and the Ministers.